

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4436 of 8th February, 2018



I ASSENT,
EDWARD DAVIS,
GOVERNOR.

2nd February, 2018.



GIBRALTAR

No. 1 of 2018

AN ACT to amend the Proceeds of Crime Act 2015 and for connected purposes.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Act may be cited as the Proceeds of Crime (Amendment) Act 2018.

Commencement.

2. This Act comes into operation on the day of publication.

Amendment of the Proceeds of Crime Act 2015.

3.(1) The Proceeds of Crime Act 2015 (“the Act”) is amended in accordance with the provisions of this section.

(2) In section 1B(2)(a) of the Act for “or senior customs officer” substitute “, senior customs officer or such other suitably qualified person as appointed by the Attorney General”.

(3) In section 1C(d) of the Act for “section 3A and section 3B” substitute “section 4A and section 4B”.

(3A) Section “1L” is renumbered as section “1L(1)”.

(3B) After section 1L(1) insert-

“(2) A person who contravenes subsection (1) commits an offence.

(3) A person guilty of an offence under this section is liable-

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.”.

(4) After section 70(2) of the Act insert-

“(2A) Conduct which-

(a) occurs in a country or territory outside Gibraltar;

- (b) constitutes, or is connected with, the commission of a gross human rights abuse or violation in accordance with section 70A; and
- (c) if it occurred in Gibraltar, would be an offence triable under the criminal law on indictment or triable either way,

is also unlawful conduct.”.

(5) After section 70 of the Act insert—

“Gross human rights abuse or violation”.

70A.(1) Conduct constitutes the commission of a gross human rights abuse or violation if all three of the following conditions are met.

(2) The first condition is that—

- (a) the conduct constitutes the torture of a person who has sought—
 - (i) to expose illegal activity carried out by a public official or a person acting in an official capacity; or
 - (ii) to obtain, exercise, defend or promote human rights and fundamental freedoms; or
- (b) the conduct otherwise involves the cruel, inhuman or degrading treatment or punishment of such a person.

(3) The second condition is that the conduct is carried out in consequence of that person having sought to do anything falling within subsection (2)(a)(i) or (ii).

(4) The third condition is that the conduct is carried out—

- (a) by a public official, or a person acting in an official capacity, in the performance or purported performance of his official duties; or
 - (b) by a person not falling within paragraph (a) at the instigation or with the consent or acquiescence—
 - (i) of a public official; or
 - (ii) of a person acting in an official capacity, who is instigating the conduct, or in consenting to or acquiescing in it, is acting in the performance or purported performance of his official duties.
- (5) Conduct is connected with the commission of a gross human rights abuse or violation if it is conduct by a person that involves—
- (a) acting as an agent for another in connection with activities relating to conduct constituting the commission of a gross human rights abuse or violation;
 - (b) directing, or sponsoring, such activities;
 - (c) profiting from such activities; or
 - (d) materially assisting such activities.
- (6) Conduct that involves the intentional infliction of severe pain or suffering on another person is conduct that constitutes torture for the purposes of subsection (2)(a).
- (7) It is immaterial whether the pain or suffering is physical or mental and whether it is caused by an act or omission.
- (8) The cases in which a person materially assists activities for the purposes of subsection (5)(d) include, but are not limited to, those where the person—

- (a) provides goods or services in support of the carrying out of the activities; or
- (b) provides any financial or technological support in connection with their carrying out.

“Gross human rights abuse or violation” – Supplementary.

70B.(1) Subject to subsection (2), sections 70(2A) and 70A apply–

- (a) in relation to conduct, so far as that conduct constitutes or is connected with the torture of a person, whether the conduct occurs before or after the coming into force of those sections.
- (b) in relation to property obtained through such conduct, whether the property is obtained before or after the coming into force of those sections;
- (c) in relation to conduct, so far as that conduct involves or is connected with the cruel, inhuman or degrading treatment or punishment of a person, only if the conduct occurs after the coming into force of those sections.

(2) Proceedings under Chapter 1 of Part V may not be brought in respect of property obtained through unlawful conduct of the kind mentioned in section 70(2A) after the end of the period of 20 years from the date on which the conduct constituting the commission of the gross human rights abuse or violation occurs.

(3) Proceedings under that Chapter are brought when–

- (a) a claim form is issued;
- (b) an application is made for a property freezing order under section 74; or
- (c) an application is made for an interim receiving order under section 81,

whichever is the earliest.”.

(6) In section 145 after the definition for “share” insert–

“ “triable either way” has the same meaning as in section 2(1) of the Crimes Act 2011,”.

(7) In section 146(6) delete the words “if the order or warrant is sought” on both occasions that they appear”.

Passed by the Gibraltar Parliament on the 29th day of January, 2018.

P E MARTINEZ,
Clerk to the Parliament.